IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Lalmani Singh. Versus Bhagwan Singh.

S.B. Criminal Misc. Petition No. 648/2006

and

Lalmani Singh. Versus Bhagwan Singh.

S.B. Criminal Misc. Petition No. 650/2006

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Date of Order: September 20, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.K. Garg, for the petitioner(s).
Mr. Rakesh Arora, for the non-petitioner.

BY THE COURT:

By these two criminal miscellaneous petitions under Section 482 Cr.P.C., the petitioner has assailed the orders dated 10-12-2005 and 6-12-2005 passed by the Additional Chief Judicial Magistrate, Sri Ganganagar (for short, "the trial Court" hereinafter) in Criminal Misc. Cases No. 1380/2005 and 1341/2005 respectively, whereby the trial Court took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter) against the petitioner.

I have heard learned counsel for the parties and

perused the orders impugned, as also the documents placed on record.

Non-petitioner Bhagwan Singh filed a complaint against the present petitioner and co-accused Dharam Singh stating therein that on being persuaded by the accused Dharam Singh and the petitioner, he gave Rs.1,50,000/- to them for being included as a partner in the firm M/s. A.K. Construction Company. For about 10 months, nothing was paid to him, nor they rendered the account. On a Panchayat being held, the accused gave him two cheques for Rs.22,000/- and Rs.20,000/- towards final settlement. On being presented, the cheques were dishonoured by the bank. The trial Court, vide impugned orders, took cognizance of the offence under Section 138 of the Act against the petitioner and co-accused Dharam Singh.

It is contended by the learned counsel for the petitioner that the petitioner is neither the proprietor of the firm A.K. Construction, nor he issued any cheque and, therefore, the impugned order cannot be sustained.

From the material placed before me, it is evident that the cheques in question have been issued by co-accused Dharam Singh, who is the proprietor of the firm M/s. A.K. Constructions Company. EX.P/1 is the photo-copy of the cheque, which bears the signature of co-accused Dharam Singh on the seal of M/s. A.K. Construction Company. There is nothing on record to

suggest that the present petitioner is the proprietor of the said firm or issued any cheque to the non-petitioner. In this view of the matter, the trial Court erred in law and on facts in taking cognizance of the offence under Section 138 of the Act against the present petitioner.

Consequently, both the criminal miscellaneous petitions are allowed. The impugned orders dated 10-12-2005 and 6-12-2005 passed by the trial Court in Criminal Misc. Cases No. 1380/2005 and 1341/2005 are set aside and the proceeding qua the petitioner for the offence under Section 138 of the Act stands quashed.

(H.R. PANWAR), J.

mcs